IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 229 of 2002
To
FIRST APPEAL No. 231 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PROJECT MANAGER, O.N.G.C.LTD.
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR AJAY R MEHTA for Appellants
MR ND GOHIL, AGP for respondent Nos.1 and 2
MR AJ PATEL for Respondents Nos.3 to 6

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 19/07/2006

ORAL JUDGMENT

By filing this group of appeals the acquiring body i.e. ONGC has challenged the judgment and order passed by the Reference Court in

Land Acquisition Reference No.17 of 1996, 1791 of 1995 and 22 of 1996. The learned Judge of the Reference Court disposed of the above refererences by its common judgment and order dated 14.11.2000 and allowed all the references partly. The learned Judge directed the appellants to pay additional compensation to the claimants at Rs.14.50 per sq. meter. Being dissatisfied with the aforesaid order of the Reference Court the appellants have preferred these three appeals under Section 54 of the Land Acquisition Act read with Section 96 of the Civil Procedure Code.

On behalf of the acquiring body, certain lands were sought to be acquired for the purpose of drilling Stage No.GNAJ NO.12. Notification under Section 4 of the Act was issued on 21.10.1993 followed by Section 6 Notification dated 26.3.1994. The Land Acquisition Officer after issuing personal notices to the claimants and after considering the evidence on record awarded Rs.2.50 per square meter by fixing the price of the land accordingly. The award was declared on 24.1.1995. The claimants were not satisfied with the same and therefore requested for Reference under Section 18 of the Act. The Land Acquisition Officer referred the matter to the District Court under Section 18 of the Act. According to the claimants, the appropriate value of the land in question is Rs.20 per square meter and not Rs.2.50 as valued by the Land Acquisition Officer. The aforesaid references were thereafter disposed of by the learned Judge by recording evidence in Reference No.17 of 1996. The learned Judge thereafter by the impugned order awarded additional amount of compensation. The appellant – acquiring body, being dissatisfied with the same, has challenged the same by way of filing these appeals.

Since factual and legal aspects in all these appeals being common, all these appeals are being disposed of by this common judgment. The

acquired land in each of the reference is an agricultural land. As stated earlier, the same was sought to be acquired by the acquiring body for its drilling operations. The land is situated at village Maguna. So far as Land Reference No.1791 of 1995 is concerned, the same is part of Survey No.172 and the area sought to be acquired is 400 square meters. So far as Reference No.17 of 1996 is concerned, it is part of Survey Nos.160 and 168 admeasuring 3457 and 464 square meters respectively. So far as Reference No.22 of 1996 is concerned, the same is part of Survey No.161 and the area sought to be acquired is 4213 square meters.

On behalf of the appellants one Gandabhai Madhavbhai, claimant of LAR No.17 of 1996 was examined at Exhibit 12. The said witness in his oral evidence has stated about the fertility of the land. On behalf of the Land Acquisition Officer, one Madhuben Arvindbhai Oza was examined at Exhibit 17. In her evidence, she has stated that the amount awarded by the Land Acquisition Officer was correct and proper and no additional amount is required to be granted. Over and above the oral evidence, the documentary evidence is produced on behalf of the claimants at Exhibit 16, which is a previous judgement in connection with the land at village Memadpur. In the instant case on behalf of the claimants no sale instances were produced for the purpose of determining the correct market price of the land at the relevant time i.e. at the time when the notification under Section 4 of the Act was issued. On behalf of the claimants reliance was placed on the oral evidence given by witness, Gandalal Madhavlal Patel in respect of the annual yield without producing any corresponding material or documentary evidence to support the said oral evidence. The said aspect was considered by the trial Judge in paragraph 15 of his judgment. The learned Judge has observed in paragraph 17 of the judgment that the claimants have relied on previous judgment at Exhibit 16 by which the trial Court in that case

had fixed the value of the land at Rs.10 per square meter as the appropriate value. The learned Judge found that Notification under Section 4 in the said case was issued in the year 1986. The learned Judge after considering the aforesaid judgment gave 10% rise and accordingly fixed Rs.17 per square meter as the appropriate price for the land under acquisition. Accordingly, Rs.14.50 additional amount is awarded.

I have heard both the learned advocates appearing in the matter. I have also gone through the record and proceedings of the trial Court.

It is required to be noted that on behalf of the claimants except oral evidence of Gandalal Madhavlal Patel no other evidence was produced. Said Gandalal Madhavlal Patel in his evidence at Exhibit 12 has stated that he is taking three seasonal crops and the annual income of the same is between Rs.45,000/- to Rs.50,000/-. In his chief examination he has stated that he spends Rs.5,000/- towards agriculture expenses. In his evidence he has stated that other lands are also similarly situated and are fertile lands. In his cross-examination he has stated that he is not keeping accounts as regards his agricultural income. He has also admitted that the land is having the facility of water connection. The judgment on which reliance is placed by the trial Court, which is at Exhibit 16 on the record is not produced by the said witness, but it seems that by consent of the parties the said document was exhibited on record. On behalf of the acquiring body one Madhuben Oza was examined at Exhibit 17 who was serving as Deputy Mamlatdar. In her evidence she has stated that after considering the sale instances of the previous sale transactions the value of the land is fixed at Rs.2.50 per square meter. Except this, there is no other evidence on record. The learned Judge has relied upon the decision at Exhibit 16 which is a

previous judgment. Learned advocate Mr Mehta for the appellant has submitted that the said judgment is not at all comparable as the said judgment deals with the land of village Memadpur, which is situated at a distance of 15-16 kilometers from the acquired land.

In my view, the order of the learned Judge of the Reference Court is unsustainable. It is required to be noted that so far as Exhibit 16, which is a previous judgment is concerned, the same is of a different village altogether. There is nothing on record to suggest the exact location and distance between the acquired land and the land which was the subject matter of the judgment at Exhibit 16. There is nothing in the evidence of the claimants to suggest the location and distance between the acquired land and village Memadpur. It is difficult to understand as to on what basis the learned Judge has come to the conclusion that the boundaries of village Memadpur and village Maguna are same and adjacent to each other. For coming to such a conclusion there has to be some evidence. The claimants' evidence is absolutely silent on this aspect. There is nothing on record to suggest that there is a common boundary between said two villages. Simply because the document is produced, it cannot be said that its contents are also proved. Since there is no evident at all to suggest that there is a common boundary between two villages, the Court could not have given any finding on that basis especially when there is no corresponding material on record before the Court to come to such a conclusion. In paragraph 8 the learned Judge has observed as under:-

> “8. I have heard learned advocates for the parties. Shri M.S.Deol, L.A. For the claimants has raised the contention that here in this case the claimants are relied upon the ratio of the assessment as reflecting in the judgment at Ex. 16 whereby this Court has

> delivered the judgment. Moreover, it is evident that the boundaries of village Memadpur and Maguna is the same and adjoining to each other. So, the previous judgment can be followed for the purpose of fixing of the market value of the land in question."

It is difficult to appreciate the reasoning given by the learned Judge as to on what basis the learned Judge has come to the conclusion that the land involved in both the cases i.e. one at Exhbit 16 and the land under acquisition is having common boundaries. The oral evidence, as discussed earlier, is only in connection with the fertility of the land of the claimants. There is no documentary evidence in that behalf. Since there is nothing on record in this regard, the order of the learned Judge is required to be set aside and the matter is required to be sent back to the learned Trial Judge. The learned trial Judge may after giving opportunity to the parties to lead evidence in connection with Exhibit 16 to find out whether the boundaries of both the places are nearby to each other and whether the fertility of both the lands is similar, etc. All these aspects are required to be considered in the light of the evidence, if any, led by the parties. As stated earlier, simply because the document is exhibited, one cannot jump to the conclusion that the market value of the acquired land of the petitioners is similar to that of the land at village Memadpur. So far as oral evidence regarding the agricultural income is concerned, it cannot be given any weightage unless it is supported by any documentary evidence on record. In short, unless there is some supporting evidence available on record, merely on the basis of oral evidence, the say of the claimants cannot be accepted as Gospel truth. Under the circumstances, the appeals are allowed by setting aside the impugned order. All these appeals are required to be remanded back to the learned Judge directing the learned Judge to allow the parties to lead the evidence in connection with Exhibit 16 for the purpose of finding out

whether the same is referable and comparable so far as the lands under acquisition are concerned.

Learned advocate for the appellant, Mr Mehta submitted that the additional amount of compensation awarded by the Reference Court is already deposited in the trial Court. If that be so, such deposit shall continue till the learned Judge decides the said references finally. The learned trial Judge is directed to dispose of references within a period of six months from the date of receipt of this order. Office is directed to send back the Record and Proceedings forthwith to the lower Court without any delay.

All these appeals are accordingly allowed with no order as to costs.

(P.B.Majmudar, J.)

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